

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**DION M. HINTON,**

**Defendant.**

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**CASE NO. 4:02CR3086**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on the joint stipulation regarding a potential reduction in sentence pursuant to crack cocaine Amendment 706 (Filing No. 186) and the Defendant's motion to reduce sentence (Filing No. 183). The Probation Office has prepared a sentencing reduction worksheet.

**PROCEDURAL BACKGROUND**

On July 11, 2003, the Defendant was sentenced to 262 months imprisonment. (Filing No. 133.) His sentencing range was 262-327 months based on total offense level 34 and he was placed in criminal history category VI. The Defendant is a career offender. (Filing No. 145.) On February 28, 2005, the Defendant's sentence was lowered to 175 months pursuant to the government's Rule 35 motion. (Filing No. 177.)

The parties stipulated that Amendment 706 results in a total offense level of 32 and a guideline range of 210-262 months. The parties stipulated that an 140-month term of imprisonment is appropriate. (Filing No. 186.)

**DISCUSSION**

The parties' calculation of the "new" total offense level fails to account for the Defendant's career offender status. Therefore, their stipulation that his total offense level is lowered in light of the crack cocaine amendments is in error. As a career offender, his

total offense level remains at level 34. Therefore, due to the Defendant's career offender status the Court is without any legal basis to lower his sentence. *United States v. Tingle*, 524 F.3d 839, 840 (8<sup>th</sup> Cir. 2008).

### **CONCLUSION**

For the reasons explained, the motion and joint stipulation are denied and the Defendant's sentence remains at 175 months.

IT IS ORDERED:

1. The joint stipulation (Filing No. 186) is denied; and
2. The Defendant's motion to reduce sentence (Filing No. 183) is denied.

DATED this 20<sup>th</sup> day of June, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge